

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

6 DAVID O. BACA,

Plaintiff,

8 | VS.

9 STATE OF CALIFORNIA, DEPARTMENT  
10 OF CALIFORNIA HIGHWAY PATROL,  
11 SERGEANT GRIMES, SERGEANT TRUE,  
12 OFFICER B. RODGERS, OFFICER M.  
WILSON, OFFICER C. RANDALL,  
OFFICER B. JEFFERS, OFFICER B.  
PHILLIPS, and DOES 1-10.

13 | Defendants.

Case No: C 13-02968 SBA

## **ORDER TO SHOW CAUSE RE DISMISSAL**

15 On October 13, 2015, the Court held a Case Management Conference for the  
16 purpose of rescheduling the trial date, which had been vacated due to Plaintiff's failure to  
17 comply with the Court's order to file a joint statement for the re-referral of the action for  
18 mediation. Dkt. 87, 89. At the Case Management Conference, Plaintiff's counsel informed  
19 the Court that he intended to file a motion to withdraw. As such, the Court declined to set a  
20 new trial date, but instead ordered counsel to file his motion to withdraw by no later than  
21 August 26, 2015. Dkt. 99, 100. On August 27, 2015, Plaintiff requested an enlargement of  
22 the filing deadline to September 4, 2015, which the Court granted. Dkt. 101, 102. To date,  
23 however, Plaintiff's counsel has not filed his motion to withdraw.

24       Federal Rule of Civil Procedure 41(b) authorizes the Court to dismiss an action  
25 where plaintiff has failed to comply with the Federal Rules of Civil Procedure or any order  
26 of the court. Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992). “[T]he district court  
27 must weigh the following factors in determining whether a Rule 41(b) dismissal is  
28 warranted: ‘(1) the public’s interest in expeditious resolution of litigation; (2) the court’s

1 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
2 favoring disposition of cases on their merits and (5) the availability of less drastic  
3 sanctions.”” Omstead v. Dell, Inc., 594 F.3d 1081, 1084 (9th Cir. 2010) (internal quotation  
4 marks omitted). “These factors are not a series of conditions precedent before the judge can  
5 do anything, but a way for a district judge to think about what to do.” In re Phen  
6 ylpropanolamine Products Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (internal  
7 quotation marks omitted). Dismissal is appropriate “where at least four factors support  
8 dismissal ... or where at least three factors ‘strongly’ support dismissal.” Hernandez v. City  
9 of El Monte, 138 F.3d 393, 399 (9th Cir. 1998).<sup>1</sup> Accordingly,

10 IT IS HEREBY ORDERED THAT Plaintiff shall show cause why the instant action  
11 should not be dismissed under Rule 41(b) for failure to comply with a Court order. By no  
12 later than the close of business on **September 16, 2015**, Plaintiff shall file a Certificate of  
13 Counsel that sets forth any basis for opposing dismissal under the factors set forth in  
14 Ferdik. Defendants may file a response to the Certificate by no later than **September 21,**  
15 **2015**. THE FAILURE TO FULLY COMPLY WITH THIS ORDER WILL BE DEEMED  
16 SUFFICIENT GROUNDS TO DISMISS THE ACTION WITH PREJUDICE, WITHOUT  
17 FURTHER NOTICE.

18 IT IS SO ORDERED.

19 Dated: 9-14-15

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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28 <sup>1</sup> Plaintiff’s history of non-compliance with the Court’s Orders are summarized in prior orders of this Court. Dkt. 87, 89, 92, 93.